

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

United States of America	§	
<i>ex rel.</i> ALEX DOE, Relator,	§	
	§	
The State of Texas	§	CIVIL ACTION NO. 2:21-CV-00022-Z
<i>ex rel.</i> ALEX DOE, Relator,	§	
	§	
The State of Louisiana	§	
<i>ex rel.</i> ALEX DOE, Relator,	§	Date: September 1, 2023
	§	
<i>Plaintiffs,</i>	§	
v.	§	
Planned Parenthood Federation of America,	§	
Inc., Planned Parenthood Gulf Coast, Inc.,	§	
Planned Parenthood of Greater Texas, Inc.,	§	
Planned Parenthood South Texas, Inc., Planned	§	
Parenthood Cameron County, Inc., Planned	§	
Parenthood San Antonio, Inc.,	§	
<i>Defendants.</i>	§	

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Defendants Planned Parenthood Federation of America, Inc. (“PPFA”), Planned Parenthood Gulf Coast, Inc., Planned Parenthood of Greater Texas, Inc., Planned Parenthood South Texas, Inc., Planned Parenthood Cameron County, Inc., and Planned Parenthood San Antonio, Inc. (together “Affiliate Defendants,” and collectively with PPFA, “Defendants”) move for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) and ask this Court to dismiss Relator’s and Texas’s claims in their entirety, subject to the constraints imposed by the Fifth Circuit’s prior decision in *Riley v. St. Luke’s Episcopal Hosp.*, 252 F.3d 749 (5th Cir. 2001) (en banc) as to the federal False Claims Act (“FCA”) claims.

In support of their Motion, Defendants respectfully refer the Court to their Memorandum in Support, which details how the FCA, Texas Medicaid Fraud Prevention Act, and Louisiana

Medical Assistance Programs Integrity Law violate the U.S. Constitution, Texas Constitution, and Louisiana Constitution, respectively.

For the reasons discussed in Defendants' voluminous briefing and at the recent hearing, Defendants maintain that they are entitled to summary judgment on the merits of Relator's and Texas's claims. If the Court agrees and grants Defendants summary judgment, the Court need not reach the issues presented in this motion. Defendants bring this motion now, however, rather than await the Court's ruling on summary judgment, to avoid any argument that this motion was filed to delay trial.

By way of brief background, after the close of briefing on the parties' motions for summary judgment, three Supreme Court justices (Justices Thomas, Kavanaugh, and Barrett) *sua sponte* raised concerns about the constitutionality of the FCA's *qui tam* provisions under Article II of the U.S. Constitution. *See U.S. ex rel. Polansky v. Executive Health Resources Inc.*, 599 U.S. 419, 449 (2023) (Thomas, J., dissenting); *id.* at 442 (Kavanaugh, J., concurring). The constitutional concerns raised by the state *qui tam* statutes are at least as troubling as those presented by the federal FCA under the U.S. Constitution, if not more so.

In the wake of the *Polansky* decision, Defendants endeavored to file this motion as soon as they reasonably could while preparing for the hearing on the parties' summary judgment motions. Defendants bring this motion now to ensure that the issues it raises are preserved and that the Court's consideration of those issues does not delay trial, in the event the Court denies Defendants' motions for summary judgment in whole or in part.

WHEREFORE, Defendants respectfully move that this Honorable Court dismiss Relator's and Texas's claims because the *qui tam* provisions of the False Claims Act, Texas Medicaid Fraud Prevention Act, and Louisiana Medical Assistance Programs Integrity Law are unconstitutional.

Dated: September 1, 2023

Respectfully Submitted,

ARNOLD & PORTER KAYE SCHOLER LLP

/s/ Tirzah S. Lollar

CRAIG D. MARGOLIS

Craig.Margolis@arnoldporter.com

TIRZAH S. LOLLAR

Tirzah.Lollar@arnoldporter.com

CHRISTIAN D. SHEEHAN

Christian.Sheehan@arnoldporter.com

JAYCE BORN

Jayce.Born@arnoldporter.com

EMILY REEDER-RICHETTI

Emily.Reeder-Ricchetti@arnoldporter.com

MEGAN PIEPER

Megan.Pieper@arnoldporter.com

ALYSSA GERSTNER

Alyssa.Gerstner@arnoldporter.com

MEGHAN C. MARTIN

Meghan.Martin@arnoldporter.com

601 Massachusetts Ave, NW

Washington, DC 20001-3743

Telephone: +1 202.942.6127

Fax: +1 202.942.5999

PAULA RAMER

Paula.Ramer@arnoldporter.com

250 West 55th Street New York,

New York 10019-9710

T: +1 212.836.8474

CHRISTOPHER M. ODELL

Texas Bar No. 24037205

Christopher.Odell@arnoldporter.com

700 Louisiana Street, Suite 4000

Houston, TX 77002-2755

Telephone: +1 713.576.2400

Fax: +1 713.576.2499

RYAN BROWN ATTORNEY AT LAW

RYAN PATRICK BROWN

Texas Bar No. 24073967

ryan@ryanbrownattorneyatlaw.com

1222 S. Fillmore St.

Amarillo, Texas 79101

T: (806) 372-5711

F: (806) 350-7716

*Attorneys for Defendants Planned Parenthood
Gulf Coast, Inc., Planned Parenthood of Greater
Texas, Inc., Planned Parenthood of South Texas,
Inc., Planned Parenthood Cameron County, Inc.,
and Planned Parenthood San Antonio, Inc.*

Respectfully submitted,

O'MELVENY & MYERS LLP

/s/ Danny S. Ashby
DANNY S. ASHBY
Texas Bar No. 01370960
dashby@omm.com
MEGAN R. WHISLER
Texas Bar No. 24079565
mwhisler@omm.com
2501 N. Harwood Street, Suite 1700
Dallas, Texas 75201
T: (972) 360-1900
F: (972) 360-1901

LEAH GODESKY (*pro hac vice*)
lgodesky@omm.com
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067
T: (310) 553-6700
F: (310) 246-6779

ANTON METLITSKY (*pro hac vice*)
ametlitsky@omm.com
7 Times Square
New York, New York 10036
T: (212) 326-2000
F: (212) 326-2061

RYAN BROWN ATTORNEY AT LAW
RYAN PATRICK BROWN
Texas Bar No. 24073967
ryan@ryanbrownattorneyatlaw.com
1222 S. Fillmore St.
Amarillo, Texas 79101
T: (806) 372-5711
F: (806) 350-7716

*Attorneys for Defendant Planned Parenthood
Federation of America, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2023, the foregoing document was electronically filed with the Clerk of Court using CM/ECF.

/s/ Tirzah S. Lollar

Tirzah S. Lollar